

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte PAUL K. PEREGRINE

Appeal No. 96-2782  
Application 08/133,692<sup>1</sup>

ON BRIEF

MAILED

JAN 22 1997

PAT.&T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Before LYDDANE, McQUADE and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

This appeal was originally taken from the final rejection of  
claims 1 through 11. The appellant has since canceled claims 2

<sup>1</sup> Application for patent filed October 7, 1993.

Appeal No. 96-2782  
Application 08/133,692

through 5 and 7 through 11, and amended claims 1 and 6. Thus, the appeal now involves only claims 1 and 6.

The invention relates to a "loop fastening device having a flexible elasticized cord and a manually releasable and slidable locking element that facilitates the holding and securing of various size structural members" (specification, page 2). Claims 1 and 6 are respectively directed to the loop fastening device and to a method of using such device. Copies of these claims as submitted with the appellant's brief (Paper No. 11) are appended hereto.<sup>2</sup>

The references relied upon by the examiner as evidence of obviousness are:

Granville	3,776,565	Dec. 4, 1973
Tomlinson	4,364,538	Dec. 21, 1982
Schwab et al. (Schwab)	4,885,824	Dec. 12, 1989
Atkinson	5,131,290	Jul. 21, 1992

Claims 1 and 6 stand rejected under 35 U.S.C. § 103 as follows:

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<sup>2</sup> It is evident when claims 1 and 6 are read as a whole that the word "fictionally" which appears in both claims should instead be --frictionally--.

Appeal No. 96-2782  
Application 08/133,692

a) claim 1 as being unpatentable over Schwab in view of Atkinson and Tomlinson; and

b) claim 6 as being unpatentable over Schwab in view of Atkinson and Tomlinson, and further in view of Granville.

Schwab discloses a length-adjustable fastening device comprising an elongated and flexible elasticized cord 12 formed in the shape of a free-standing loop having its ends aligned and extending parallel to one another, a manually releasable and slidable binder or fastener 20 having an opening that encircles the loop-forming runs of the cord, and a clamping member 28 crimped onto the ends of the loop to prevent them from passing through the binder opening. The device carries one or more connecting hooks 14, 30 which are secured to the cord via pull through knots (see Figures 1 through 4) to facilitate the use of the device to bundle, tie down or fasten objects together.

Atkinson discloses a steering wheel cover 10 which includes a looped elastic cord 16 for attaching the cover to a steering wheel and a barrel lock 17 on the cord for adjusting the size of the loop.

Appeal No. 96-2782  
Application 08/133,692

Tomlinson discloses an adjustable picture-hanging cable 10 which has each of its ends looped over and connected to the remainder of the cable by crimpable tubular sleeve-like members 18 and 28.

Granville discloses a strap 14 for loosely connecting a ski to a boot even after the safety binding on the ski has released the boot. The strap includes an elastic cord-like member 20 and a tubular sleeve 40, and is applied by looping the cord-like member about a portion of the binding, passing it through the tubular sleeve, wrapping it about the neck of the boot and releasably connecting its ends (see column 3, line 44 et seq.).

The threshold issue in this appeal is whether the Atkinson, Tomlinson and Granville references are "unrelated" or non-analogous prior art as argued by the appellant (see pages 9 through 12 in the brief).

Prior art is analogous if it is within the field of the inventor's endeavor or is reasonably pertinent to the particular problem with which the inventor was involved. In re Clay, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992).

Appeal No. 96-2782  
Application 08/133,692

In the present case, the appellant has characterized his invention as pertaining "to the field of multiple use loop fastening devices having an elasticized cord and a slidable locking element to facilitate the holding and securing of various size structural members" (specification, page 1). The Atkinson, Tomlinson and Granville references relate to loop fastening devices which are designed for specific securement purposes. Thus, while these references are arguably outside the field of the appellant's endeavor, they are nevertheless reasonably pertinent to the holding and securing problem with which the appellant was involved. In this regard, it is not unreasonable in cases such as this which involve relatively simple everyday-type mechanical concepts to permit inquiry into areas where one of even limited technical skill would be aware that similar problems exist. See In re Heldt, 433 F.2d 808, 812, 167 USPQ 676, 679 (CCPA 1970). Accordingly, Atkinson, Tomlinson and Granville are analogous prior art references which were properly considered by the examiner in evaluating the obviousness of the subject matter on appeal.

Appeal No. 96-2782  
Application 08/133,692

With particular regard to claim 1, the appellant has not disputed the examiner's determination that the Schwab fastening device meets all of the limitations in this claim except for those calling for the manually releasable and slidable fastener to be a "barrel-shaped fastener" of the sort specified and the clamping member to be "tubular" (see page 4 in the answer (Paper No. 13)). According to the examiner, it would have been obvious to one of ordinary skill in the art to modify the Schwab device to include such elements in view of Atkinson's disclosure of a barrel-shaped fastener of the type claimed for adjusting the size of a looped elastic cord and Tomlinson's disclosure of tubular clamping members for securing the ends of a looped cable (see pages 4 through 7 in the answer (Paper No. 13)).

The appellant's argument that the combined teachings of Schwab, Atkinson and Tomlinson would not have suggested this modification of the Schwab device (see pages 9 and 10 in the brief) is unpersuasive. Atkinson and Tomlinson are cited by the examiner for their respective disclosures of expedients which are admitted by the appellant to be "well-known" (see page 6 in the

Appeal No. 96-2782  
Application 08/133,692

appellant's specification). The examiner's conclusion that one of ordinary skill in the art would have found these "well-known" expedients to be more desirable alternatives to the corresponding components in the Schwab fastening device due to their strength and/or ease of use is well taken.

The appellant's additional contention that the "invention has been recognized by commercial success in the marketplace" and "that this marketplace recognition should be protected by issuance of a patent" (brief, pages 10 and 11) is also unconvincing. Presumably, the appellant is relying in this regard on the 37 CFR § 1.132 declaration filed on December 29, 1994. This declaration, however, is entitled to little, if any, probative value as evidence of non-obviousness.

To begin with, the declaration fails to place the sales figures set forth therein in any meaningful context such as share of a definable market. Lacking a meaningful context, these bald sales figures are insufficient to establish commercial success (see In re Huang, 100 F.3d 135, 137, 40 USPQ2d 1685, 1689 (Fed.

Appeal No. 96-2782  
Application 08/133,692

Cir. 1996); and Cable Elec. Prods. v. Genmark, Inc., 770 F.2d 1015, 1026-27, 226 USPQ 881, 887-88 (Fed. Cir. 1985)).

Moreover, the declaration also fails to establish by factual evidence any nexus between the sales figures and the merits of the claimed invention, i.e, that the sales were a direct result of the unique characteristics of the claimed invention - as opposed to other economic and commercial factors unrelated to the quality of the claimed invention. Thus, even if the sales figures were indicative of commercial success, they would not be relevant to the issue of obviousness present in this appeal due to the failure of the declaration to establish the requisite nexus (Id.).

In light of the foregoing, the evidence and argument advanced in this appeal by the examiner and the appellant, considered in their entirety, lead to the conclusion that the differences between the subject matter recited in claim 1 and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person



Appeal No. 96-2782  
Application 08/133,692

having ordinary skill in the art. We shall therefore sustain the standing 35 U.S.C. § 103 rejection of this claim.

We shall not sustain, however, the standing 35 U.S.C. § 103 rejection of claim 6.

Simply put, there is nothing in the combined teachings of Schwab, Atkinson, Tomlinson and Granville which would have suggested the sequential set of steps set forth in claim 6. As tacitly conceded by the examiner, the method of using a fastening device disclosed by Schwab, even when modified in accordance with the teachings of Atkinson and Tomlinson as discussed above, does not meet the method recited in this claim. The substantial differences in structure and intended use between the fastening devices respectively disclosed by Schwab and Granville belie the examiner's attempt to utilize Granville to overcome this deficiency.

Appeal No. 96-2782  
Application 08/133,692

In summary and for the above reasons, the decision of the  
examiner to reject claims 1 and 6 under 35 U.S.C. § 103 is  
affirmed with respect to claim 1 and reversed with respect to  
claim 6.

AFFIRMED-IN-PART

*Will. E. Lyddane*  
WILLIAM E. LYDDANE  
Administrative Patent Judge

*John P. McQuade*  
JOHN P. McQUADE  
Administrative Patent Judge

*Jeffrey V. Nase*  
JEFFREY V. NASE  
Administrative Patent Judge

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APPENDIX

Claim 1. A three part fastening device for fastening at least two objects together, said three parts comprising;

(1) an elongated and flexible elasticized cord having two ends, said cord being formed into a free-standing loop wherein said two cord ends are generally end-aligned and extend generally parallel to each other,

(2) a manually releasable and slidable barrel-shaped fastener, said barrel-shaped fastener having an opening therein that encircles two cord runs comprising said cord loop, said opening being somewhat larger than the cross sectional area of said two cord runs, said barrel-shaped fastener having a manually releasable plunger that is spring biased to reduce said opening to a size generally smaller than said cross sectional area of said two cord runs and to thereby fictionally trap said two cord runs in said opening, said plunger being manually releasable to enable said barrel-shaped fastener to freely slide along said two cord runs as said loop is adjusted in size to tighten or loosen said fastening device while said barrel-shaped fastener is being used to fasten objects together, and

(3) a tubular clamping member encircling and crimped to said two cord ends, said tubular clamping member operating to enlarge the cross sectional area of said two cord ends so that said two cord ends are larger than the size of said opening in said barrel-shaped fastener.

Appeal No. 96-2782  
Application 08/133,692

Claim 6. A method of using the device of claim 1 including the sequential steps of;

encircling at least two objects with said free standing loop,

positioning said free-standing loop adjacent to said tubular clamping member,

passing said tubular clamping member and said barrel shaped-fastener through said free-standing loop,

releasing said barrel-shaped fastener from said two cord runs by operation of said plunger,

moving said barrel-shaped fastener to a position along said two cord runs in a manner to stretch said free-standing loop about said at least two objects, and

allowing said barrel-shaped fastener to fictionally trap said cord runs with said barrel-shaped fastener in said moved position.

Appeal No. 96-2782  
Application 08/133,692

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